Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

DR. SIMON BANKS, J.D. T/A JOB PROTECTORS FORMER ADMINISTRATIVE LAW JUDGES

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Dr. Simon Banks, J.D.
Job Protectors
Former Administrative Law Judges
468 M Street, S.W.
Washington, D.C. 20024
[202] 554-5627

96 pp

QUESTION PUT FORTH

Whether federal courts, in a removed case under 42 U.S.C. § 1443, [where petitioner allege and shows inability to enforce federal rights in the state courts notwithstanding the doctrine(s) set forth in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462,] have jurisdictional authority to protect federal rights, to vacate, alter, enjoin continued enforcement of a final judgment issued by a State Court of Appeals resulting in an injunction arising out of a state law that conflict with federal laws and where continued enforcement of the State Court of Appeals injunction unwarrantly violate clearly established rights arising under federal laws providing for equal civil rights, and where changed conditions, newly established state/municipal policy, custom, practice and laws, reflect that continued

enforcement of the injunction unwarrantly perpetuate discrimination and violate clearly established federal and constitutional rights.

IIST OF PARTIES

The following parties appeared below.

PARTY PETITIONER:

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[202] 554-5627

PARTY RESPONDENT:

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Chairman,

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THE COURT BELOW

The District of Columbia Court of Appeals For The District of Columbia Circuit denied rehearing en banc on May 20, 1993.

The Petition for Writ of Certiorari was filed on August 18, 1993, accordingly, the appeal is timely.

This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1254(1) (certiorari) and (c) (important and unsettled questions) of this court.

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41 Op. Atty. Gen., February 23, 1951;
1964 Op. Atty. Gen., Nov. 24. Nash v. ICC. 1955, 225 F.2d 42, cert den. 76 S.Ct. 343.
Mem. Op. at 10, JA 27; citing S. Rep. No. 969, 95th Cong., 2d Sess. 8 (1978), and S. Rep. No. 969, 95th Cong. , 2d Sess. 8 (1978)

REASON FOR GRANTING THE WRIT

A reason for granting the writ is to protect the federal rights of government and private sector employees nationwide to have lay representatives bring and prosecute discrimination complaints on their behalf alleging violation of civil rights and equal employment rights, against the United States Government and Private Sector Employers, before administrative agencies of the United States and State Agencies contracted by the United States to Prosecute, Investigate and conciliate violations of Civil Rights and Equal Employment Laws providing for equal civil rights, without having the lay representative being prohibited or subjected to prosecution under conflicting state local bar rules, and other state laws requiring local bar membership as a prerequisite for exercising federal rights. **This Court should Grant a Writ of Certiorari to Review the Court's Decision in District of**

Columbia Court of Appeals v Feldman, 460 U.S. 462, ¶3, for purposes of determining the scope and limit of jurisdictional authority that district courts have in protecting federal rights and rights arising out of federal law against a state court whom allows its employees unbridled discretion to continuously ignore, nullify, chill, rights arising under federal laws while enforcing state laws that conflict with federal laws and rights arising thereunder.

STATEMENT OF CASE

On June 25, 1992, Simon Banks, Petitioner, a former administrative law judge with the District of Columbia Government, [1] filed a petition for removal of the case In re Simon Banks 92-652, to the United States District Court for the District of Columbia Circuit, alleging that he could not enforce his federal rights providing for equal civil rights in the District of Columbia Court of Appeals on the basis that the District of Columbia Court of appeals has continually subjected him to selective and

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[1] Banks was appointed administrative law judge and hearing examiner by the District of Columbia Commission on Human Rights, the judicial arm of the District of Columbia Office of Human Rights, pursuant to federal grant funds provided by the United States Department of Labor and the United States Equal Employment Opportunity Commission, 1n 1975-1976, and during the period 1977-1978 Banks served as an Administrative Law Judge with the District of Columbia Rental Accommodation Office [Rent Control], now a subagency of District of Columbia Consumer and Regulatory Affairs Agency. [DCRA] Although Banks has a Juris Doctor Law Degree Banks is not licensed to practice law in the District of Columbia.

selective and discriminatory prosecution under the District of Columbia Court of Appeals Rule 49 on Unauthorized Practice of Law [DCCA CUPL][2] which conflicts with local statutory laws and federal laws and rights arising under federal laws when Banks attempts to exercise his federal and statutory right to represent parties before administrative agencies.

Moreover, the conduct of the state court prior to removal as well as conduct of the state court subsequent to remand, while the case has been on appeal, shows that Banks cannot enforce his constitutional rights, federal rights, and rights under laws providing for equal

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[2] District of Columbia Court of Appeals Rule 49 On Unauthorized Practice of Law prohibits lay representation of parties in any proceeding involving matters of law notwithstanding the D.C. Court Appeals Ruling in Brookens v. Committee On Unauthorized Practice of Law, 538 A.2d 1120 (D.C. 1988)

civil rights where State court employees have been continuously involved in retroactive rulemaking, intentional misrepresentation of fact and law, prosecutorial misconduct, selective enforcement of unauthorized practice of law provisions, interference with Banks contractual relations; facilitating boycott(s) against Banks by the United States Equal Employment Opportunity Commission, the Fairfax County Human Rights Commission, the Alexandria Office of Human Rights, state contract agencies of the EEOC,[3] and the D.C.C.A. CUPL's employees have been engaged in acts of continued stimatization of Banks by deliberately mischaracterizing Banks

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See Banks v. Edwards [DCRA], et al, USCA No. 94-5058, C.A. Banks v. Dixon, et al No. 91-3099, Banks v. Teitelman, et al, 93-0152, Banks v. District of Columbia Government, et al 89-08971

conduct of providing and advertising his availability to represent clients before administrative agencies, as "unauthorized practice of law".

The D.C.C.A. Committee On Unauthorized Practice of Law [D.C.C.A. CUPL] has with impugnity, continuously, falsely and fraudulently stigmatized Banks' authorized representation of clients before federal and state administrative agencies, in the press nationwide, as constituting unauthorized practice of law, thereby creating a hostile work atmosphere for Banks and disbelief amongst Banks' clients and members of the public and legal profession concerning Banks' legal right to represent parties before federal and state administrative agencies that provide for lay representation.

The D.C.C.A. CUPL, have stigmatized and falsely published to each of Banks' that Banks' lay representation of clients before administrative agencies constitute unauthorized practice of law, under the smokescreen and pretext of enforcing D.C.C.A. Rule 49. The D.C.C.A. CUPL, has on an on-going and continuous basis, from 1986 to the present date, disseminated these intentional misrepresentation of law and fact to Banks clients with impugnity, for purposes of influencing complaints against Banks based on subornation of perjury. These acts of D.C.C.A. CUPL, have been taking place with the knowledge of the D.C. Court of Appeals. These acts of D.C.C.A. CUPL have caused Banks continuous irreparable harm and breach of contracts by Banks clients, some of whom have brought complaints, in detrimental

reliance upon the good-faith and the **perceived** integrity, legal validity, and good faith of the DCCA CUPL, acting under the seal of the D.C. Court of Appeals. These deceptive attempts by the D.C.C.A. CUPL are pursuant to an on-going conspiracy set in motion by volunteer attorneys, James Schaller and Stuart Pierson, whom serve as parttime employees of the District of Columbia Court of Appeals and whom are otherwise are principal members of law firms whom discriminate in employment and are law firms that are engaged in representing clients and business interest that are targets of Banks and Banks' advocacy against discrimination in employment by employers that violate civil rights and discrimination laws.

The DCCA-CUPL has been joined by other

federal and state employees whom have detrimentally relied upon the legal validity and authenticity of the D.C.C.A. CUPL's conduct of selective enforcment D.C.C.A. Rule 49 against Banks, and have thereby aided, abetted the impeding, boycotting and otherwise chilling Banks' attempt to exercise his federal constitutional rights to represent parties before administrative agencies that provide for lay representation of parties.

This case presents questions concerning the scope of a century-old federal law that permits a defendant in a state court proceedings to transfer his case to a federal trial court under certain condition where a defendant cannot enforce federal rights under laws

providing for equal civil rights.[4]

Banks alleged in his Petition that D.C.C.A. Committee on Unauthorized Practice of law' [CUPL] prosecution of him is racially motivated, and that its enforcement of D.C.C.A.'s Rule 49 is impermissibly irrational, unreasonable, discriminatory, selective and denies him equal protection of laws. The terms and conditions placed upon Banks pursuant to D.C.C.A.'s Rule 49 and DCRA's Consumer

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[4] That law, now 28 U.S.C. § 1443 (1964 ed.) provides: [citing Georgia v. Rachel, et al, 384 U.S. at 782]:

"§ 1443. Civil Rights Cases,

'Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

'(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

"(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

Protection Procedures Act, [CPPA] D.C. Code § 28-3904 (1991).[5]

The D.C. Court of Appeals has utilized Banks for its rulemaking activities.

Subsequent to removal of the case, and while the case was on appeal of the remand order pursuant to petitioner's motion for Mandamus filed with the United States Court of Appeals for the District of Columbia Circuit, the D.C.C.A., acting outside of its jurisdictional authority, changed the docket number from 92-652 to 92-SP-652, added new complainants whom complained through an affidavit authored

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[5] This law recently upheld by the D.C. Court of Appeals on December 6, 1993, after the filing of the Petition for Writ of Certiorari in Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No.91-AA-883 (DCCA, Dec. 6, 1993) excludes lawyers from its provision whom regularly practice before administrative agencies that provide for lay representation, with no pro hac vice requirement.

by Stuart Pierson, Chairman of D.C.C.A. CUPL, and thereafter the D.C.C.A. proceeded to make rulings in violation of the removal jurisdiction of the United States District Court. [6] The D.C. Court of Appeals thereafter and in connection with proceedings that took place after removal, granted a motion to DCCA. CUPL for injunctive relief, and has established a hearing upon the CUPL's motion for contempt to be convened on May 10, 1994, in violation of Banks' due process rights, federal rights and right to equal protection of the laws. **See Appendix No. 3**

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[6] **See 28 U.S.C. § 1446(d), which precludes state court proceedings after removal. See** In Matter of Meyerland Co., **910 F.2d 1257, at 1263, (5th Cir. 1990; See also** Royal v. State Farm Fire and Cas. Co., **685 F.2d 124, n2 (1982), See also** Thermtron Products, Inc. v. Hermansdorfer, **423 U.S. 336, 352-53. The Supreme Court provided for the right of appeal of a remand issued in a removed case under 28 U.S.C. § 1443. See** Georgia V. Rachel, **384 U.S. at 787.**

The D.C.C.A. further prejudiced Banks' right to receive a fair trial and enforce his federal rights under laws providing for equal civil rights by upholding a decision and new retroactive law of the District of Columbia Consumer and Regulatory, Affairs Agency [DCRA] Consumer Protection Procedures Act, [CPPA] D.C. Code § 28-3904, which excludes lawyers but includes non-members of the Bar.[7] The D.C.C.A. has not shown any legitimate interest for its classification

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The District of Columbia Consumer and Regulatory Affairs, Consumer Protection Procedures Act excludes lawyers from its coverage and prohibits non attorneys from indicating that they are the "functional equivalent of a lawyer", a prior restraint upon the First Amendment, operates as an unreasonable restraint on the liberty of contract in violation of U.S.C.A. Const. Amend 5/14, **See** Careleton Screw Products Co. v. Fleming, C.C.A. Minn. (1974), 126 F.2d 537; **See** Friedman v. Supreme Court of Virginia, 822 F.2d 423, U.S.C.A. Const. Art. 4, § 2, Cl. 1., the law violates Article IV, § 2 of the constitution which provides:
"Citizens of each state shall be entitled to all privileges and immunities of Citizens of the several states." **See** New Hampshire v. Piper, 470 U.S. 284.

action. As such the classification and enforcement is unconstitutional and violative of law.[8]

Banks alleged in a second removal of the case brought by Banks while the D.C.C.A. was proceeding with the contempt proceedings and injunctive proceedings under a new case number, after Banks had petitioned the Supreme Court for Writ of Certiorari, alleging that D.C.C.A.'s enforcement of D.C.C.A.'s Rule 49 impermissibly and irrationaly continues to discriminates against him because of his race, Black, in violation of the Civil Rights Act of 1964, and alleging that the D.C.C.A. CUPL conspired with DCRA to

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[8] The D.C.C.A.'s classification and discriminatory enforcement of D.C.C.A. Rule 49, does not bear a substantial relationship to the District of Columbia Government's ligitimate/rational objectives. Piper, supra, 470 U.S. at 284, 105 S.Ct. at 1279; United Building & Construction Trades Council v. Mayor & Council of Camden, 465 U.S. 209, 104 S.Ct. 1020.

promulgate retroactive laws, DCRA CPPA, D.C. Code § 28-3904 (1991), and Banks alleged in the second removal petition that while the case was pending before designated Superior Court Judge Richard Levie, the D.C.C.A. issued its ruling on December 6, 1993, arbitrarily opining in In Re Simon Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883, that Banks could be held liable for indicating that he is the functional equivalent of a lawyer, and further upholding the exclusion of lawyers whom regularly practice before administrative agencies from DCRA-CPPA's coverage. **BANKS HAS PETITIONED THE SUPREME COURT FOR WRIT OF CERTIORARI, APRIL 29, 1994 in connection with the decision of Banks v. DCRA supra.** Banks contends that the D.C.C.A.'s decision in Banks v. DCRA,

No. 91-AA-883, provides guidance to the designated Superior Court Judge, and to prospective witnesses, that Banks conduct of stating, indicating, implying that he is the equivalent of a licensed member of the Bar or that his services has some approval, that Banks may thereby be deemed violative of provisions prohibiting the unauthorized practice of law under D.C.C.A. Rule 49 and of DCRA-CPPA's regulations, even if it is perceived by any client that Banks indicated he is the functional equivalent of a lawyer, absent any cognitive test or impirical data.

While the instant case was pending disposition of Banks' petition for Writ of Certiorari, the D.C. Court of Appeals, waited one year and several months to rule upon Banks discovery request, denying Banks the right to question its Committee

on Unauthorized Practice of Law upon its prosecutorial misconduct, and D.C. Court of Appeals denied Banks' ethics complaint against its chairman, Stuart Pierson alleging subornation of perjury, and ethical misconduct and judicial misconduct. The D.C.C.A. limited the issues to be decided to whether Banks violated the injunction and the DCCA limited Banks discovery to former client witnesses, identified as complainants by CUPL, thereby shielding its committee and all other witnesses from Banks and any motion of Banks to strike evidence based on unlawful taint, and for purposes of steering the outcome of the contempt proceedings, and for protecting the court, Stuart Pierson, the Committee and persons operating with it, from the civil suits Banks filed against the D.C.C.A. CUPL and

other co-conspirators.[9]

The D.C.C.A., on December 6, 1993, arbitrarily and capriciously, determined that Banks violated DCRA's CPPA's retroactive law, when he advised Hodges [a client] that he would file a discrimination complaint before the United States Equal Employment Opportunity Commission as an "administrative advocate": [at p.5 ¶3 Banks v. DCRA, No. 91-AA-883.]

"DCRA, in joint complicity with DCCA CUPL, structured CPPA to shore up defects in D.C.C.A. Rule 49] concluded that Banks had committed six unlawful trade practices. Specifically: "[Banks'] use of the title 'administrative advocate' and rendering of legal advice misrepresented

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9 See Banks v. District of Columbia, et al, 89-0871, Banks v. Edwards, et al 91-3099; Banks v. Teitelman, et al, 93-0152

that his services had a sponsorship, approval, certification, characteristic, and were of a particular standard, or quality when it did not in violation of D.C. Code § 28-3904 (a), (b) and (d)." Code § 28-3904(u)." **See** Banks v. DCRA, supra.

Immediately subsequent to the promulgation of DCRA-CPPA new law, D.C. Code § 28-3904 (1991), DCRA utilized the new law to retroactively hold Banks in violation of the law for conduct that occured on May 31, 1989. **See opinion of D.C.C.A.** in Simon Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883, decided December 6, 1991, at p.3 ¶2.

Banks further alleged that the Chairman of CUPL, Stuart Pierson, and his predecessor James Schaller and CUPL acted as lobbiest, investigators, prosecutors

and, conspirators and co-authors of a retroactive regulation promulgated by the District of Columbia Consumer and Regulatory Affairs Office, which is also a co-defendant in the RICO-Conspiracy, deprivation of civil rights cases [10] brought by Petitioner in 1989 and 1990, and 1992 against the D.C.C.A, inter alia, and that this legislation, rule, regulations was promulgated to facilitate reprisal actions against Petitioner and to enhance, embellish and discriminatorily chill and otherwise impose requirements of Rule 49 against Banks' exercise of federal rights under laws affording for equal civil rights. These rights include, but are not limited to rights afforded under

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[10] See Banks v. District of Columbia Government, et al, C.A. No. 89-0871, Banks v. Edwards, [DCRA], C.A. No. 91-3099 and Banks v. Teitelman, et al, 93-152

1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e.

Banks allege that the DCRA retroactive regulation[11] is retaliatory, constitute a regulatory taking, that it is unconstitutional on its face, that it was designed to bolster the defects of D.C.C.A' Rule 49, to facilitate the abridgement of his rights under the 1964 Civil Rights Act, the Equal Protection Clause, the First Amendment and that it was further promulgated as a prior restraint, to restrain, restrict, protected expressions, and protected speech. The court has held such conduct unlawful. **See** Arkansas Writer's Project, Inc. v. Ragland (1987), 105 S Ct. 1722; Schenck v. United States (1919) 249 U.S.

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[11] District of Columbia Consumer Protection Procedures Act [1991] D.C. Code § 28-3904

47., Schaumburg v Citizens For Better Environment (1980) 444 U.S. 620, Cohen v. California (1971) 403 U.S. 15, Near v. Minnesota (1931) 283 U.s. 697; New York Times Co. v. United States (1971) 403 U.S. 713. And it has been selectively and unconstitionally applied to Banks while it on the other hand arbitrarily immunized whites not licensed to practice law in the District of Columbia as a perferred class absent any rational, legitimate governmental interest.

The DCRA retroactive Regulation operate as a prior restraint upon speech and has a chilling affect upon Banks' federal constitutional rights providing for equal civil rights under federal law that a reasonable person would know.

D.C. App. Ct. Rule 49 conflicts with specific federal and local statutes,

municipal policy, custom, practice and procedures, that provide through their practice rules that authorize lay representation of parties before administrative agencies. This practice is not covered by D.C. App. R. 49.[12]

Notwithstanding the D.C. App. Ct.'s ruling in Brookings, supra. the D.C. Appeals Court's enforcement of Rule 49 against Banks' authorized representation of clients before administrative agencies, is discriminatory, selective and conflicts with federal laws and rights arising under federal laws.[13] The DCCA-CUPL's

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[12] See **Brookens v. Committee On Unauthorized Practice Of Law, 538 A.2d 1120 (D.C. 1988)**

[13] **CIVIL SERVICE REFORM ACT**

The Civil Service Reform Act of 1978 (CSRA or Act), 5 U.S.C. §§ 7501-7543, Pub. L. No. 95-454, 92 Stat. 111 (codified as amended by 5 U.S.C. §§ 1101-8913) **See Legislative History of the Civil Service Reform Act of 1978, at 636, 639 (Comm. Print 1979)** provide that federal employees are entitled to be represented by any person of their choosing and that person does not have to be an attorney, 29

prosecution of Banks for violating D.C. App. Ct. R. 49, when Banks exercise federal rights by representing clients before federal administrative agencies, discriminatorily violates Banks constitutional rights and Banks' federal rights protected by the 1964 Civil Rights Act providing for equal civil rights.

Banks cannot enforce his federal civil rights providing for equal rights, before the District of Columbia Court of Appeals, in the contempt hearing scheduled for May 10, 1994, or any other proceeding convened by the D.C.C.A. for the additional reason that the D.C. Court of Appeals has allowed its Chairman of the D.C. Court of Appeals Committee On Unauthorized Practice of Law, Stuart

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C.F.R. § 1614.214(b), 29 C.F.R. § 1614.605, 5 C.F.R. 1201.31. See D.C. Code § 1-1509(b)

Pierson, [D.C.C.A. CUPL] to taint and otherwise influence the testimony of each witness by stating to each witness that Banks' lawful representation conduct in representing clients before administrative agencies, constitute unauthorized practice of law, and that Banks' statement that he is a former administrative law judge, constitute unauthorized practice of law, notwithstanding the truth of each of these assertions and conduct.

13/ It is without dispute that Banks has

On December 8, 1993, Stuart Pierson, Chairman of D.C.C.A. CUPL, wrote to C. Roger Cooper, client of Banks residing in Florida, providing in part as follows:

"On Decmeber 6, 1993, the District of Columbia Court of Appeals handed down a decision which may be of additional interest to you concerning your complaint against Simon Banks. This does not relate to the contempt proceeding against Mr. Banks that is scheduled for hearing January 18, 1994.

"In the case of Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883 (DCCA, December 6, 1993), the Court held that members of the public like you may recover money paid to people like Banks who solicit the

never been charged with representing any party before any court.*

The D.C.C.A. has determined, with respect to the instant case, that Banks cannot secure discovery against the Court's Committee on the basis that it is outside the scope of the proceedings, and the court has denied inclusion of Banks ethics complaint against Stuart Pierson [Chairman of CUPL], thereby limiting the

functional equivalent of a lawyer, and rely on such representation as "administrative advocate", may recover the payments if the services were not performed. A complaint must be submitted to the D.C. Department of Consumer and Regulatory Affairs, and that agency must agree to order the recovery."

On March 11, 1994, Stuart Pierson Chairman DCCA CUPL, wrote an additional letter to C. Roger Cooper and all of Banks' clients from list provided it by cooperating attorneys in the District of Columbia and United States Government, providing:

"The hearing on the District of Columbia Court of Appeals' order to show cause why Mr. Banks should not be held in contempt for violating that Court's 1987 injunction against his unauthorized practice of law will be heard before D.C. Superior Court Judge Richard A. Levie. The Hearing will be held on May 9, 1994 AT 9:30 a.m. in Courtroom 516 in the Moultrie Courthouse located at 500 Indiana Avenue, N.W., Washington, D.C.

proceedings strictly to whether Banks violated the injunction. The D.C.C.A. has denied Banks' motion to vacate and/or alter the injunction based upon the undisputed the fact that the District of Columbia Government has adopted the title "Administrative Law Judge", changing the title "Hearing Examiner". [14]

The D.C.C.A's-CUPL's prosecution of Banks for violating D.C.C.A's Rule 49 is violative of the Supremacy Clause and the Pre-emption Clause. [15]

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[14] In 1991, the District of Columbia Office of Employee Appeals changed the title "Hearing Examiner" to "Administrative Judge", although their position of record is "Hearing Examiner". Subsequently, the District of Columbia Consumer and Regulatory Affairs changed the title "Hearing Examiner" to "Administrative Judge", and some of its employees utilized the title "Administrative Law Judge" although their position of record is "Hearing Examiner."

[15] These actions by the D.C.C.A., the CUPL, the DCRA, violates the Supremacy Clause. The Court has stated: "States have oblgation, under supremacy clause, to protect federally guaranteed civil rights as zealously as would federal courts. Rachel v. State of Ga., 86 S.Ct. 1783.

FEDERAL RIGHT TO REPRESENT PARTIES BEFORE ADMINISTRATIVE AGENCIES AND RIGHT TO SPEAK OF FORMER TITLE "ADMINISTRATIVE LAW JUDGE"

The actions of the DCCA of enforcing conflicting provisions of DCCA Rule 49 against Banks by adjudicating Banks' representation of clients before administrative agencies pursuant to D.C. App. Ct. R. 49 as constituting unauthorized practice of law, is discriminatory and the enforcement of Rule 49 conflict with federal laws and rights arising under federal laws that a reasonable person would know. [16]

"When federal law is passed under authority of Constitution, it is supreme, and state law in conflict therewith must yeild. Pritchard v. Downie, D.C. Ark. 1962, 201 F. Supp. 893, affirmed 309 F.2d 634.

[16] Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, 29 C.F.R. § 1613.213, 29 C.F.R. § 214.(b)-217, 261, 605 and 606, 29 C.F.R. § 1614.605, 29 C.F.R. § 1614.106, 29 C.F.R. § 1601.70, 29 C.F.R. § 1613.61 [precluding reprisal against complainant's representative; EEOC Directive Transmittal and Order 570.001, dated

Sept. 1987, EEOC Order 572, dated March 12, 1979, "Definitions, ¶h., provides: **"Employee Representative. "An attorney or other person designated by the employee, in writing, who is willing to act on the employee's behalf in matters involving a proposed or actual suspension.."** ; 5 C.F.R. § 1201.31(b), provides: **"A party may choose any representative so long as the person is willing and available to serve"**; 5 U.S.C. § 1201.31; Federal Register, Thursday July 10, 1986, Part II Merit Systems Protection Board 5 CFR Part 1201 Practice and Procedure, Final Regulation, at § 1201.31, Representation provides:

"(a) A party to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representative. (b) A party may choose any representative so long as the person is willing and available to serve."

The Merit Systems Protection Board Appeals Form Page 2, Part V ¶31, Designation of Representative, provides:

"You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney.*;

District of Columbia Register, Commission on Human Rights Guidelines, Page 3, at 3202.3 provides:

"The representative of a party before the Commission does not have to be an attorney"

District of Columbia Office of Employee Appeals "Appeals Form", Part III, Hearing ¶7; specifically provide that employee representative(s) do not have to be an attorney.

5 U.S.C. § 3105.5372. and 7521 (Supp. 1V 1980) provides: **- The Title "Hearing Examiner" was changed to "Administrative Law Judge" by United States Civil Service Commission regulation on Aug. 19, 1972, 37 Fed. Reg. 1687, and by statute on March 27, 1978, 5 U.S.C. § 3105 (Supp. 1V 1980). See Manual For Administrative Law Judges Prepared for the Admiistrative Conference of the United States, Published in 1972, Revised Edition 1982, by Merritt Ruhlen Administrative Law Judge, Retired;**

Circular of Maria Lucia Johnson, confirmed by the United States Senate as Vice-Chair of U.S. Merit Systems Protection Board, 1983, upon her

The enforcement policy of DCCA violate Petitioner's federal constitutional rights under the Const. Amend. 1, right to speak of his former employment title "Administrative Law Judge" with the District of Columbia

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Senate testimony that she was a "former Administrative Law Judge with the District of Columbia Rental Accommodations Office, and formerly Chief Administrative Judge, D.C. Temporary Appeals Panel, at ¶3 provides: "**...She has also been...an Administrative Judge with the District of Columbia Rental Accommodations Office (RAO);**

Certification of Simon Banks & Associates by the Government of the District of Columbia Minority Business Opportunity Commission, Charlotte G. Chapman, chairperson, **certified and registering Simon Banks & Associates as "Administrative Law Judge & Hearing Examiners, Legal Consultants", Certification Number 3495, dated February 21, 1980;**

Memorandum of Warren M. Cruise, Esq. Executive Director of District of Columbia Office of Employee Appeals, dated November 8, 1991, provides:

> **"Re: Title Change of Hearing examiners. Beginning November 12, 1991, the title of "Hearing Examiner" is to change to "Administrative Judge". This change should be made on all outgoing documents which now contain the title "Hearing Examiner". Decisions written on or after November 12, 1991 should reflect this title change."**

Government.[17] The speech restriction constitute prior restraint and is

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[17] These unwarranted speech restrictions have been held unconstitutional by the Courts. D.C.C.A.'s continuing injunction precluding Banks from using his former title "Administrative Law Judge", while it permits the employees of the District of Columbia Office of Employee Appeals and the District of Columbia Consumer and Regulatory Affairs Agency, to change the name of its "Hearing Examiners" to "Administrative Law Judge", without punishment or similar prohibition, operates as an unreasonable restraint on the liberty of contract in violation of U.S.C.A. Const. Amend 5. **See** Careleton Screw Products Co. v. Fleming, C.C.A. Minn. (1974), 126 F.2d 537, and D.C.C.A.'s action violates Banks rights under the Privileges and Immunities Clause. **See** Friedman v. Supreme Court of Virginia, 822 F.2d 423, U.S.C.A. Const. Art. 4, § 2, Cl. 1.

D.C.C.A.'s discriminatory enforcement of Rule 49 against Banks violates Article IV, § 2 of the Constitution which provides:
"Citizens of each state shall be entitled to all privileges and immunities of citizens of the several states." **See** New Hampshire v. Piper, 470 U.S.284."

Further, D.C.C.A.'s discriminatory enforcement of D.C.C.A. Rule 49, does not bear a substantial relationship to the District of Columbia Government's ligitimate/rational objectives. Piper, supra, 470 U.S. at 284, 105 S.Ct. at 1279; United Building & Construction Trades Council v. Mayor & Council of Camden, 465 U.S. 209, 104 S.Ct. 1020.

"Congress intended doctrines of federal law uniformly to prevail over inconsisgtent local rules," Republic Steel Corp. v. Maddox, 379 U.S. 650, 653, 85 S.Ct. 614 (1964).

"Federal regulations preempt state law or municipal ordinance. U.S. ex rel. Goodwin v. Karnuth, D.C. N.Y. 1947, 74 F. Supp. 660.

arbitrary, capricious, and prejudicial to Petitioner's rights and, constitute an abuse of discretion and is further in violation of the District of columbia Administrative Procedures Act, [DCAPA] D.C. Code, §1-1501, in that it deprives Petitioner of due process of law and substantive procedural rights. The D.C.C.A.-CUPL in its enforcement of D.C. App. Ct. Rule 49 arbitrarily, irrationally ignored, failed to credit or follow the rules of the administrative agencies providing for lay representation of parties before the D.C. Office of Employee Appeals [D.C. OEA], and the D.C. Office of Human Rights, the EEOC and the Merit Systems Protection Board and Administrative Agencies of the United

States, in violation of law.[18] The District of Columbia Court of Appeals opined, in Wallace v. District of Columbia Unemployment Compensation Board, D.C. App., 289 A.2d 885 (1972), District of Columbia Agencies must comply with the DCAPA -- specifically, D.C. Code, §1-509(d), when enforcing conflicting rules and grant the parties their appropriate procedural rights -- that any conflicting practices were superseded by the DCAPA.

Banks alleged in his removal pleadings that **the District of Columbia Court of Appeals Committee on Unauthorized**

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COURT OF APPEALS REQUIRED TO FOLLOW AGENCY'S CONSTRUCTION OF STATUTE IF THAT CONSTRUCTION IS REASONABLY DEFENSIBLE

The Court of Appeals was obliged to follow construction of statute by agency charged with its administration if that construction was "reasonably defensible." 5 U.S.C.A. §§ 7511, 7512(A-E), 7514. **See** Nat. Treasury Employees U. v. U.S. Merit Systems, 743 F.2d 895, at 898 (1984).

Practice of Law discriminatorily and selectively perceives and unlawfully maintains that his representation of clients before administrative agencies of the District of Columbia and of the United States constitute unauthorized practice of law[19] and that this perception/misconception which governs

[19] Stuart Pierson, Chairman of the District of Columbia Court of Appeals, with the consent and knowledge of the D.C. Court of Appeals, has repeatedly stated to virtually all clients of Banks that Banks' representation of parties before administrative agencies that permit lay representation, constitute unauthorized practice of law for purposes of creating a hostile work atmosphere for Banks and to influence complaints and breach of contracts against Banks. This false and malicious representation of fact has been aided and abeted by the actions of cooperating defendants Banks sued in related cases for for facilitating boycotts against Banks and for engaging in restraint on trade and RICO conspiracies against Banks. Banks' client list have been turned over to the D.C. Court of Appeals and Stuart Pierson by RICO participants and co-conspirators which include state and federal employees of the District of Columbia Consumer & Regulatory Affairs, the District of Columbia Office of Employee Appeal, and the United States Equal Employment Opportunity Commission, in Banks v. D.C. Government, et al, 89-0871, Banks v. Dixon, Civil Action 91-3099 [a/k/a Banks v. Aubrey H. Edwards, et al, No. 94-5058 - USCA DC] Banks v. Teitelman, et al 93-152 [a/k/a Simon Banks, Appellant vs Samuel Teitelman, et al, No. 94-557 -- USCA DC]

perception/misconception which governs DCCA-CUPL's prosecution and persecution of Banks has been condoned by the District of Columbia Court of Appeals in violation of clearly established law that a reasonable person would know. **See** **Brookens v. Committee On Unauthorized Practice of Law**, 538 A.2d 1120___ (1988)[20]

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[20] **In Brookens the Court opined, "Lay Practice Before D.C. Agencies," holding:**

"Since 1979, Brookens has appeared on behalf of clients at hearings before the Rental Accommoations Office. The Committee urges that these appearances constitute the practice of law, and because Brookens is not a member of the District of Columbia Bar, these appearances constitute the unauthorized practice of law as defined in D.C. App. R. 49 (b). Following a hearing on the issue, the court held:

"Respondent's activities before the Rental Accommodations Office must be considered in a different light. Because Rule 49 does not deal with representation of others before administrative agencies, and because in this instance respondent's activities before the Rental Accommodations Office were authorized

under the rules of that agency, the Court concludes that respondent has not engaged in the unauthorized practice of law, and has not violated Rule 49, by representing persons other than himself before the Rental Accommodations Office." Mem. Op. at 9.

"The Committee advances two main arguments designed to establish that the court's ruling is erroneous. First, the Committee argues that any District of Columbia agency regulation that purports to permit anyone other than an attorney licensed to practice law in the District of Columbia to appear on behalf of clients is invalid because it exceeds the scope of the Distict of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 et seq. (1981). D.C. Code § 1-1509 (b) provides in part that "[e]very party [in a contested case] shall have the right to present in person or by counsel his case or defense.." The Committee argues that D.C. Code § 1-1509 (b) should be interpreted to limit a litigant in an agency proceeding to one of two choices: representing himself or hiring an active membe of the District of Columbia Bar to act as counsel. Accordingly, the Committee asks this court to find that the agency rule at issue in this case, 14 DCMR §3202.1 (1986), is ultra vires this part of the D.C. Administrative Procedure Act.....

".....The Committee urges that the agency rule, 14 DCMR 3202.1 is ultra vires D.C.

Code § 1-1509 (b) which provides that "[e]very party in a contested case] shall have the right to present in person or by counsel his case or defense." The Committee argues that because the regulation is ultra vires the District of Columbia Administrative Procedure Act, it is invalid. We disagree.

"On its face, D.C. Code § 1-1509 (b) articulates the rights of a party to representation in contested cases before administrative agencies of the District of Columbia. Since the provision lists a party's minimum entitlements - pro se appearance or representation by counsel - it leaves open the possibility that a gency might wish to expand those in the legislative history of this right to include, perhaps, lay representation. ..." ".....Nothing in the legislative history of this D.C. Code provision suggests otherwise. Pub. L. No. 90-614, § 10, 82 Stat. 1208 (Oct. 21, 1986); H.R. Rep. No. 202, 90th Cong., 1st Sess. (1967); S. Rep. No. 1581, 90th Cong., 2d Sess. (1968)..Indeed, the only reference to the stutorily provided breadth of representation due parties in contested cases is to be found in Senat's summary of the Bill's provisions.."..." We hold, therefore, that the regulations of the Rental Accommodations Office authorizing lay representation of a party not ultra vires D.C Code § 1-1509 (b)."

Petitioner alleged that he has been denied and cannot enforce in the state court of the District of Columbia his rights under federal law. The federal law invoked providing Petitioner with federal rights under laws, rules, regulations affording Banks equal civil rights.[21] These federal rights provide petitioner, a non-member of the District of Columbia Bar, with the right to represent parties before administrative agencies of the United States and before 706 state agencies that contract with the United States Equal Employment Opportunity Commission for the right to investigate

[21] These rights include but are not limited to: Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, Section 717 of the 1964 Civil Rights Act, Executive Order 11246, 5 U.S.C. § 3105, 29 C.F.R. § 1613.214(b), 29 § 1613.217, 261, 606 and 606, and 29 C.F.R. § 1614.106, 29 C.F.R. § 1613.605, and 29 C.F.R. § 1601.70.

and conciliate discrimination complaints. D.C.C.A. Rule 49 and DCRA's Consumer Protection Procedures Act, [CPPA] D.C. Code § 28-3904 (1991), unreasonably, impermissibly and irrationally discriminates against Petitioner and prohibits the exercise of these federal rights. And Rule 49 and its enforcement thereby further deprives Banks of these federal rights by making it unlawful for Banks to exercise these federal rights.

The Court has authorized removal in cases setting forth deprivation of federal rights under state law. **See** 28 U.S.C. § 1443. **See** Georgia v. Rachel, et al, 384 U.S. 780, Hamm v. City of Rock Hill, 379 U.S. 306.[22]

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[22] In Hamm, the Supreme Court held that the Civil Rights Act of 1964 precluded state trespass prosecutions in peaceful "sit-in" cases even though the prosecutions were instituted before the Act's passage. In terms of the language of § 1443 (1), the Court of Appeals held that, if the allegations

The D.C. Court of Appeals, has selectively authorized Stuart Pierson and DC CUPL to create a hostile work environment,[23]

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in the removal petition were true, prosecution in the state court, under a statute similar to the state statues in Hamm, denied respondents a right under a law (the Civil Rights Act of 1964) providing for equal civil rights. Hence, the court remanded the case to the district court with directions that respondents be given an opportunity to prove that their prosecutions resulted from orders to leave public accommodations for racial reasons, in which case the district court under Hamm would have to dismiss the prosecutions. Petn. for Removal of the State Court Trespass Prosecutions can be had under § 1443 (1) upon the allegation in the removal petition that the trespass prosecutions stem exclusively from the respondent's refusal to leave places of public accommodation covered by the Civil Rights Act of 1964 when they were asked to leave soley for racial reasons. p. 788-805.
(d) ... a basis for prediction is the equivalent of a state statute authorizing the predicted denial, a requirement established by the leading cases interpreting subsection (1) of § 1443 Strauder v. West Virginia, 100 U.S. 303; Virginia v. Rives, 100 U.S. 313 p. 794-804.

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Banks allege that the D.C.C.A. by and through its employees, D.C.C.A. CUPL, particularly James Schaller and Stuart Pierson, Chairman and former Chairman of D.C.C.A. CUPL, respectively, and others operating in concert with them influenced Banks' clients to relinquish their contractual obligation with Banks, influenced Banks' clients to falsely state that they believed Banks is a licensed member of the District of Columbia Bar notwithstanding their having executed disclosure statements to the contrary, that CUPL harassed, intimidated, caused privacy protected personnel information about Banks and Banks' clients to be published in violation of the privacy act and in violation of § U.S.C.

frustrate and other wise interfere with Banks' ability to enforce his federal rights and contracts arising out of Banks' exercise of federal rights by allowing Stuart Pierson to use the power and influence of the D.C. Court of Appeals to secure the identities of Banks' clients and thereafter influence Banks' clients to file complaints against Banks and these complaints have been utilized by Stuart Pierson [Chairman D.C.C.A. CUPL] to selectively prosecute Banks and influence

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552(a), that CUPL stigmatized and interferred with Banks' contracts, contractual relations, and ability to make and enforce contracts, caused self-serving false, adverse, stigmatizing information to be published in the Legal Times, a co-defendant of D.C.C.A. CUPL, in a case brought by Banks, and that these actions were done with impugnity, condoned by D.C.C.A., when CUPL substantially relied upon absolute immunity of D.C.C.A. and its employees when carrying out these malicious, wrongful attacks upon Banks, thereby creating a hostile work atmosphere and an abusive work environment for Banks, in violation of law. The Supreme Court described the contents of an abusive and hostile work environment. See Teresa Harris v. Forklift Systems, Inc., 92-1168, decided Nov. 9, 1993, citing Meritor Savings Banks v. Vinson, 477 U.S. 57, 66 (1986).

others to prosecute Banks for exercising rights under federal laws providing for equal civil rights under the pretext of prosecuting D.C. Ct. App. Rule 49.

Notwithstanding Banks' restricted representation of parties before federal administrative agencies and administrative agencies of the District of Columbia that do not require a license to practice law, Banks has been denied and cannot enforce these statutory and federal rights in the courts of the District of Columbia.

D.C.C.A. and its Committee "CUPL" and the District of Columbia Consumer and Regulatory Affairs Agency has selectively interpreted and enforced D.C. App. R. 49 against Banks as precluding the representation of parties before administrative agencies by persons whom are not licensed to practice law in the

District of Columbia and whom purport to be the functional equivalent of a member of the District of Columbia Bar. See **Op. of D.C.C.A. in In re Simon Banks, No. 91-AA-883 (Decided December 6, 1993)** thereby violating Banks' rights protected by the First Amendment, the **Due Process Clause,** [24] **the** Equal Protection Clause and the

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[24] The actions of the DCCA-CUPL, DCCA and District of Columbia Consumer & Regulatory Affair are irrational and effectively denies Banks due process rights. The Courts have held that an irrational decision denys substantive due process. See Shelton v. Station, 780 F.2d 475. The actions are arbitrary and unreasonable. See Unity Ventures v. County of Lake, 841 F.2d. U.S.C.A. Const. Amend 5. In Committee of U.S. Citizens Living In Nicaraqua v. Reagan, 859 F.2d 929, the court held: "Substantive due process prevents governmental power from being used for purposes of oppression or abuse of government power tht shocks the conscience, or action that is legally irrational in that it is not sufficiently keyed to any legitimate state interest.

The Courts have opined: "Due process includes an impartial tribunal. See Melton v. City of Oklahoma City, 879 F.2d 706. See further, Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sinderman, 408 U.S. 593 (1972).

The courts have granted mandamus against judge where there was clear usurpation of power and/or where the court has acted arbitrarily and in disregard of appropriate safeguards, i.e. in violation of established procedural rights. See Firestone Tire & Rubber Co. v. General Tire &

Privileges and Immunities Clause.[25]

Rubber Co., C.A. Md. 1970, 431 F.2d 1199, cert denied, 91 S.Ct. 1196.

The Courts have held that: "Citizens of the United States are afforded Constitutional protection against deprivation of property without due process of law. Such protection is available to persons arbitrarily deprived of their rights by state and federal action whether under guise of legislative authority or otherwise. See Phillip Waqne, Inc. v. Leser, 239 U.S. 207 (1915); Gotkin v. Miller (1957, CA N.Y.) 514 F.2d 125; Board of Reqents v. Roth (1972), 408 U.S. 564 (1972); Fuentes v. Shevin (1972), 407 U.S. 167; Perry v. Sinderman (1972) 408 U.S. 593, and 42 U.S.C. § 1983.

The D.C. Code [DCAPA] § 1-1509 sets forth the procedures required of District of Columbia Agencies, and the rights of parties in contested cases -- and the legal rights, duties, or privileges of specific parties and their representatives as required by law. Chevy Chas Citizens Ass'n v. District of Columbia Council, D.C. App., 327 A.2d 310 (1974), and agency actions may be set aside when the agency's action does not accord a party the procedural rights provided by the D.C. Code, 1-1509(b) See Carey v. District Unemployment Comp. Bd., D.C. App. 304 A.2d 18 (1973).

The Courts have opined: "The concept of Substantive Due Process invest judges with uncanalized discretion to invalidate federal and state action that violates the constitution. See Illinois Psychological Ass'n v. Falk, 818 F.2d 1337, 1342 (7th Cir. 1987).

[25]The Privileges and Immunities Clause provide that:

"Citizens of each state shall be entitled to all privileges and immunities of citizens of the serval states." See New Hampshire v. Piper,

D.C.C.A. Rule 49 conflicts with constitutionally proteded federal laws and are preempted pursuant to the Supremacy Clause.[26] Banks further alleged that the D.C.C.A. Rule 49 has been selectively applied to him, by custom, policy and practice of D.C.C.A. in a dissimilar and discriminatory manner, because of his race, Black, and because Banks filed civil complaints against the D.C. Court of

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470 U.S. 284.

Further, D.C.C.A.'s discriminatory enforcement of D.C. App. R. 49 against Banks does not bear a substantial or rational relationship to the District of Columbia Government's ligitimate objectives. Piper, supra, 470 U.S. at 284, United Building & Construction Trades Council v. Mayor & Council of Camden, 465 U.S. 209.

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The Court has stated: "States have an obligation, under the supremacy clause, to protect federally guaranteed civil rights as zealously as would federal courts. Rachel v. State of Ga., 86 S.Ct. 1783.

"When federal law is passed under authority of Constitution, it is supreme, and state law in conflict therewith must yeild. Pritchard v. Downie, D.C. Ark. 1962, 201 F. Supp. 893, affirmed 309 F.2d 634.

Appeals for condoning the unlawful activities of James Schaller, Stuart Pierson and CUPL.

Banks alleged in his removal petition that from 1984 to the present he has been and is being prosecuted in connection with his attempt to exercise federally guaranteed rights conferred pursuant to the civil rights act of 1964,[27] because he is Black and because he is an advocate against discrimination in the workplace,

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[27] The Supreme Court in Georgia v. Rachel, 384 U.S. at 792, stated that the Civil Rights Act of 1964 ..."is clearly a law conferring a specific right of racial equality, for in § 201 (a) it guarantees to all the "full and equal enjoyment" of the facilities of any place of public accommodation without discrimination on the ground of race. By that language the Act plainly qualifies as a "law providing for ...equal civil rights" within the meaning of 28 U.S.C. § 1443 (1). ... The Civil Rights Act of 1964 endows the defendants with a right not to be prosecuted for such conduct.

" As noted, § 201 (a) guarantees to the defendants the equal access they sought. Section 203 then provides that, "No person shall...(c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202." (Emphasis supplied.) 78 Stat. 244.

and because he regularly brings discrimination complaints against employers represented by members of the District of Columbia Bar. Banks allege that the actions of DCCA-CUPL and DCRA in its enforcement of D.C. App. Ct. R. 49 is violative of rights protected by 42 U.S.C. § 1983. [28] Banks further allege that he

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[28] **SECTION 1983**

In 1979 Congress extended Section 1983 to make it available as a remedy for deprivations of federal rights by officials acting under color of the laws of the District of Columbia. Pub. L. No-170, § 1, 93 Stat. 1284 (1979). In amending Section 1983 Congress intended to put citizens of the District of Columbia on the same footing as citizens of the states. **See**, e.g., H.R. Rep. No. 96-548, 96th Cong., 1st Sess. 1 (1979) (purpose of legislation is "to give citizens of the District of Columbia rights equal to those of citizens in the states and territories of the United States"). Congress thus intended that federal jurisdiction should extend to vindicate the federal rights of citizens of the District of Columbia in the same way it extends to citizens of the states.

In a case such as the instant case where the official policy is to selectively and discriminatorily enforce D.C.C.A. Rule, 49, DCRA-CPPA and other laws against Banks, the court has held such official policy unlawful. **See** Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690 (1978), **See also** Pembour v. City of Cincinnati, 475 U.s. 469, 106 S.Ct. 1292 (1986).

Federal intervention is warranted because

also represented a former secretary employee of Stuart Pierson and the law firm of Davis Wright Tremaine, for sexual harassment. Davis Wright Tremaine employs Stuart Pierson, Chairman of the District of Columbia Court of Appeals Committee on Unauthorized Practice of law. Banks has filed suit against DCCA, DCCA-CUPL, James Schaller, [former Chairman of DCCA-CUPL] Jackson & Campbell [Schaller's law firm], Stuart Pierson, and Davis Wright Tremaine

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Petitioner cannot receive a fair and full day in court on his federal constitutional claims by raising them as a defense in the District of Columbia Court of Appeals, or the District of Columbia Courts based upon the consistent apparent boycott of these federal rights. This case consist of the extraordinary circumstances that Younger v. Harris, 401 U.S. 37 envision that provide that federal courts may not enjoin on-going state criminal proceedings. The United States District Court of Appeals for the District of Columbia Circuit
has not determined whether the Younger doctrine is applicable to the federal courts in the District of Columbia. See Family Division Trial Lawyers v. Moultrie, 725 F.2d 695, 701, n.7 (D.C. Cir.1984). The predicate for Younger abstension is simply absent in this case.

[Pierson's law firm]. Because Banks civil suits, DCCA-CUPL has been subjecting Banks to retaliation and reprisal through their government positions, for purposes of manufacturing defenses to the civil suits and for purposes of oppressing Banks and depriving Banks [a Black Male] of Civil Rights, in violation of law. 42 U.S.C. § 1983.

D.C.C.A. in In Re Simon Banks, 561 A.2d 158 (D.C. Appeals, 1987), CUPL initially charged Banks with leading untutored public members into believing that he is a licensed member of the D.C. Bar merely by holding out that he is authorized to represent parties before administrative agencies. Banks countered with disclosure statements executed by each client acknowledging that they were advised that Banks and Job Protectors are

not licensed to practice law, that Banks is a former administratrive law judge, that Banks has a law degree, and that Banks is an administrative trial advocate whom is authorized to represent clients before federal administrative agencies. D.C.C.A. nullified Banks' disclosure statements opining that statements about Banks experience as an administrative law judge and trial advocate and J.D. misleads the lay public, without the benefit of any empirical data or survey of clients. The court substantially based its decision upon inferences against the evidence on the record. D.C.C.A. then cited in its opinion In In re Banks, 561 A.2d 158 (D.C. 1987, 1989) that the defense Banks raised, regarding his federal rights and the pre-emption clause, was an issue before the court in another case. **See** Brookens v.

Committee On Unauthorized Practice of Law, D.C. 538 A.2d 1120. (1989) Banks previously [1975-1976] was employed with the District of Columbia Commission on Human Rights [DC COHR] as the Chief Administrative Law Judge. The DC OHR and the DC COHR's rules, regulations, specifically provide in its regulatons and rules that a license to practice law is not required.[29] After Banks advised D.C.C.A. that he had in excess of 500 disclosures statements, where clients acknowledge that they were aware that Banks is not licensed to practice law, but authorized to represent them pursuant to statutory law, D.C.C.A. then arbitrarily determined that Banks' disclosure statments confused the entire general

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[29] Section 106.8/10 of DCR 56, District of Columbia Human Rights Act of 1977, as amended, D.C. Law 2-38, D.C. Code §§1-2501-1-2557

public, without any statistical study or any reasonable survey of Banks' clients.[30]

Banks alleged in the removal of the case, that the D.C.C.A. Committee On Unauthorized Practice of Law and the D.C.C.A. has seized regulatory authority over Banks pursuant to an injunction for purposes of forcing him out of business, and thereafter the D.C.C.A. subjected Banks to discriminatory boycotts and prior restraint of Banks' First Amendment Rights, when it arbitrarily precluded Banks from stating he is a former administrative law judge or otherwise using his employment history or describing his representation of clients as an "administrative trial advocate" as a competitive tool to compete against white

[30] **See** In re Simon Banks, 561 A.2d 158, and memorandum of Opinion.

members of the Bar, in violation of the First Amendment, and in violation of the Sherman Antitrust Act. The failure of D.C.C.A. to declare Banks' federal rights and failure of D.C.C.A. to determine the constitutionality of D.C.C.A. Rule 49, resulted in the implementation of a series of conspiracies in violation of § 1 of the Sherman Act.

Banks alleged that the D.C.C.A. boycotted review of his appeal of the case per curiam and en banc, and that D.C.C.A. boycotted his motion to vacate, amend or alter the injunction because of the pending civil actions and because Banks filed a complaint against D.C.C.A. Appeals and Judge Gallagher of D.C.C.A., through subtle coordinated actions. The Supreme

Court defined boycotts.[31] The boycott initiated by D.C.C.A. continues and has been linked to other boycotts influenced by the D.C.C.A., the D.C. Bar Association, attorneys employed with the U.S. Equal Employment Opportunity Commission, and other entities controlled by members of the District of Columbia Bar, whom boycotted complaints filed by Banks and boycotted Banks as the representative of EEO complainants from 1987 to the present date.

These participants in the boycotts initiated by the D.C.C.A. thru its Committee CUPL, further boycotted Banks'

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[31] The Supreme Court has defined a boycott, at, St Paul Fire & Marine Insurance Co. v. Barry, 438 U.S. 531 (1978, United States v. South Eastern Underwriters Assn., 322 U.S. 533 (1944), as: "...refusals to deal involving the coordinated action of multiple actors .." "...To boycott means to combine in refusing to hold relations. See Family Division Trial Lawyers v. Moultrie, 725 F.2d 695, 701 (D.C. Cir. 1984).

because of his use of his former title "Administrative Law Judge" and participated in the interference with Banks contractual relations, prosecution and persecution of Banks although the District of Columbia Consumer & Regulatory Affairs and the District of Columbia Office of Employee Appeals have changed the title of "Hearing Examiner" to "Administrative Judge", in 1991, sua sponte by a simple memo. This changed circumstance warrants and merits alteration of the injunction precluding Banks from using or referring to the title on the basis that the District of Columbia Government had not adopted the change affected by the United Civil Service Commission.[32] Thereafter Banks has been

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[32] 37 Fed/ Reg/ 1687, August 19, 1972, and by statute on March 27, 1978. 5 U.S.C. § 3105 (Supp. IV)

systematically deprived of a declaration of the constitutionality of D.C.C.A. Rule 49 pursuant to the judicial boycott and continuous deprivation of equal protection of the laws and subjected to retroactive rulemaking by D.C.C.A and DCRA.[33]

Because of the D.C.C.A.'s failure to declare and articulate the scope of Banks' federal rights under federal law to represent parties before administrative agencies coupled with the ambiguity,

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Petitioner allege that, In In Re Simon Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883, decided December 6, 1993, the D.C.C.A. did loo[k] to the future and co-authored and otherwise chang[ed] existing conditions by making a new rule. DCRA Consumer Protection Procedures Act, [CPPA], D.C. Code § 28-3904 (1991) to be applied thereafter to all or some part of those subject to its power. See Prentis v. Atlantic Coast Line Co., 211 U.S. at 226, and John J. Kinney, Jr., et al v. District of Columbia, et al U.S.C.A. D.C., No. 91-7164, decided June 1, 1993.

See Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988) where the Court held that such a change in law constitute invalid retroactive rulemaking.

conflicting signals and public pronouncements of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law pursuant in its enforcement and interpretation of D.C.C.A.'s Rule 49, Banks has continuously been a victim of the boycotts engaged in and endorsed by the D.C.C.A. under the pretext of enforcing D.C.C.A. Rule 49, although clearly established law and reason reflect that D.C.C.A. Rule 49 is in conflict with the federal rights Banks seek to exercise under clearly established federal laws and District of Columbia Administrative Law.[34] D.C.C.A. Ct. Rule 49 essentially maintain that any

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[34] 29 C.F.R. §1614.214(b), 29 C.F.R. §1614.605, 29 C.F.R. § 1201.31. See also Brookens v. Committee On Unauthorized Practice of Law, 538 A.2d 1120 (1988).

representative capacity by a non-licensed member of the Bar, that involves interpreting, assessing and prosecuting issues of law, constitute unauthorized practice of law under D.C. Law, when said actor is not a member of the District of Columbia Bar. This provision has been selectively and discriminatorily enforced against Banks. As a result of the selective prosecutorial conduct of DCCA CUPL, Banks has suffered a continuing violation of his constitutional and federal rights under federal laws that afford such right without the requirement. This interpretation, however, is only applied to Banks because he is Black, while out-of-state white attorneys not licensed to practice law in the District of Columbia are not subjected to any sanction or scrutiny with respect to their

regular practice before administrative agencies. There are no pro hac vice requirements for attorneys practing before District of Columbia and Federal Administrative agencies that are enforced against attorneys, whom primarily are white. In fact these white attorneys not licensed to practice law in the District of Columbia are given a "constructive waiver" and are arbitrarily excluded from the purview of D.C.C.A. Rule 49 and the District of Columbia Consumer and Regulatory Affairs Consumer Protection Procedures Act [CPPA],[35] while Banks is

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[35] See Opinion of D.C. Ct. of App. in In re Simon Banks, No. 91-AA-883, at p."A" ¶3, [Decided Dec. 6, 1993] [See Dr. Simon Banks' Petition For Writ of Certiorari, - Banks v. DCRA] - where the court provides:

> "This court also exercises some authority over the unauthorized practice of law by nonlawyers, See D.C. App. R. 49, but there is no statutory or other authority to the effect that our power over the unauthorized practice of law is

vigorously singled out for selective prosecution for his enjoyment and exercise of the same benefits and privileges afforded by federal law, in violation of the Equal Protection Clause of U.S.C.A. Const. Amend 14 §1.[36].

The D.C.C.A. has systematically and historically not prosecuted white members of the District of Columbia Bar and white members of other state bars that represented parties before federal administrative agencies located in the District of Columbia. **See D.C. Ct. App.R. 46 II (b)(1), the predecessor of D.C.C.A. Rule 49. The Rule provides specific**

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exclusive. Although the Consumer Protection Procedures Act excludes from its purview the "professional services of...lawyers," D.C. Code § 28-3903 (c)(2)(C) (1991)."

[36] The Equal Protection Clause of U.S.C.A. Const. Amend 14 §1, is a "Law Providing Equal Rights" within meaning of 28 U.S.C. § 1443. See Dedd v. Rue, D.C. Ohio 1979, 478 F. Supp. 975.

details regarding the import of the phrase 'practice of law,' R.46 II (b)(2) & (3), and it also excludes from its scope attorneys who are 'participating ... before any court of the United States' or 'before any department, commission or agency of the United States." See also Simons v. Bellinger, 643 F.2d 774 (1980), and Simon Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883, decided December 6, 1993.

The Court's Committee treated the Simones, whom are white, in a different manner. See Simons v. Bellinger, 643 F.2d 774 (1980) [The District of Columbia Court of Appeals withdrew its prosecutorial actions against Morton L. Simons and Barbara M. Simons when it was determined that these New York attorneys, [not

licensed to practice law in the District of Columbia, restricted their practice to federal administrative agencies.][EMPHASIS ADDED]

Although Banks stands on the same if not greater footing as the Simonses, in addition to the fact that Banks does reflect in his stationary, business card and business advertisements, that he limits his representation before administrative agencies, Stuart Pierson, James Schaller, the CUPL and persons and entities acting in concert with them have sought to treat Banks in a dissimilar manner from the way D.C.C.A. treats the Simonses and other whites.

There is no dispute that the CUPL have never presented or prosecuted any case against Banks connected with any representation on behalf of clients by

Banks before any court in the District of Columbia.

D.C.C.A. on November, 1987 issued an injunction based upon the preclusions set forth in D.C.C.A. Rule 49 notwithstanding the fact that Banks consistently required his clients to execute a disclosure statement acknowledging that they were aware that Banks is not licensed to practice law and that Job Protectors is not licensed to practice law, but that Banks is licensed thru the regulatory rules of various administrative agencies to represent parties before federal and state administrative agencies whom afford lay representation of parties. **See** In re Simon Banks, 561 A.2d 158.

The District of Columbia Consumer and Regulatory Affairs Agency [DCRA] in conspiracy with the D.C.C.A. CUPL

promulgated new retroactive regulations in 1991 designed to subject Banks to reprisal, on the basis of enforcing D.C. App. Ct. Rule 49 and the injunction that arose out of D.C.C.A.'s interpretation of Rule 49, after Banks sued DCRA in 1989. [37] The New regulations, DCRA's Consumer Protection Procedures Act, [CPPA] D.C. Code § 28-3904 (1991) preclude non members of the bar from even indicating that they are the functional equivalent of a member of the Bar, is overly broad and unconstitutional.

The United States Government Administrative Agencies established a boycott operating in concert with

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[37] See Simon Banks v. Aubrey H. Edwards, et al, USCA DC No. 94-5058 [Aubrey H. Edwards was director of DCRA. Banks sued DCRA for adopting new retroactive rules in 1986, precluding Banks from representing clients before the D.C. Rental Accommodations Office where Banks served as a Chief Hearing Examiner and Administrative Law Judge]

employees of the D.C. Court of Appeals, James Schaller and Stuart Pierson, Chairmen of D.C.C.A. CUPL, and these agencies that employed members of the D.C. Bar interferred with Banks' ability to make and enforce contracts in interstate commerce, based upon Rule 49 and the injunction that arose out of D.C.C.A. CUPL's enforcement of D.C.C.A. Rule 49. Banks sued D.C.C.A., EEOC, the Virginia Bar, the D.C. Bar, and others for establishing a Racketeering Conspiracy, and for conspiring to deprive Banks of civil rights, et cetera. Banks v. District of Columbia Government, 89-0871, Banks v. Dixon, et al, 91-3099; Banks v. Teitelman, et al, 93-0152.

D.C.C.A.' employees, James Schaller, Stuart Pierson, CUPL, have initiated and otherwise triggered retroactive

legislation and a boycott of Banks and Job Protectors in the District of Columbia DCRA, [38] in the State of Virginia, in the State of Maryland, and they are attempting to establish a boycott of Banks/Job Protections and retroactive legislation in the State of Georgia for purposes of discriminatorily depriving Banks of federal rights in the 50 States throughout the United States. **See Pierson's letter to Cooper, dated December 8, 1993 a resident of the State of Georgia.**[39] Thereby discriminatorily impairing commerce in violation of the Sherman Act.

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[38] DCRA Consumer Protective Procedures Act,

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Stuart Pierson, Chairman of District of Columbia Court of Appeals, wrote to Banks' client C. Roger Cooper, whom resides in the State of Georgia, on Decembr 8, 1993, urging Cooper, two days subsequent to the D.C.C.A.'s decision dated December 6, 1993 in **In Re Simon Banks v. DCRA, No. 91-AA-883**, to declare that he thought Banks was a licensed attorney and the functional equivalent to a lawyer, for prosecutorial reasons, prior to Banks being afforded opportunity to appeal.

CONCLUSION

Banks request this Honorable Court to remand the case to the United States District Court for a hearing on the merits, and direct the District Court to determine the constitutionality of D.C.C.A. Rule 49, and provide Banks with a hearing on his motion to vacate the injunction, and declare Banks' federal and statutory rights to represent parties before administrative agencies that provide for lay representation of parties, and to declare Banks' right to refer to his former employment with the District of Columbia Government as an Administrative Law Judge as provided by the First Amendment, and to determine Banks' right to refer to his service as provided by the First Amendment, as that of an "administrative trial advocate"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. SIMON BANKS, J.D.
a/b/a Job Protectors
Former Administrative Law Judges

Petitioner,

v.
Civil Action No. 92-1504

STUART F. PIERSON, Chairman,
District of Columbia Court of
Appeals Committee on Unauthorized
Practice of Law,

Respondent.

O R D E R

This case comes before the Court on the **Petitioner's Petion for Removal.** After careful consideration of the petition, and for the reasons set forth in the accompanying Memorandum, the Court concludes that this case must be remanded.

Accordingly, it is hereby

ORDERED that this case is remanded.

Date: JUL 13, 1992

JOHN GARRETT PENN

CHIEF JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. SIMON BANKS, J.D.
a/b/a Job Protectors
Former Administrative Law Judges

Petitioner,

v.
Civil Action No. 92-1504

STUART F. PIERSON, Chairman,
District of Columbia Court of
Appeals Committee on Unauthorized
Practice of Law,

Respondent.

M E M O R A N D U M

This matter is before the Court on **Plaintiff's Petition for Removal.** On June 25, 1992, petitioner filed the petition for removal. The underlying action that petitioner seeks to remove is In Re Simon Banks,[1] D.C.C.A. No. 92-562, a civil contempt proceeding brought by the Committe on Unauthorized Practice of Law in the District of Columbia Court of Appeals concerning enforcement of that

[1] *The Court notes that petitioner has titled the action to be removed as Simon Banks v. Stuart F. Pierson. The Court, however, notes that the action pending in the District of Columbia Court of Appeals is titled In Re Simon Banks. Therefore, it appears that petitioner has not properly removed the pending action.*

court's rules.

In his petition for removal, petitioner alleges that he cannot effectively enforce his rights in the District of Columbia Court of Appeals ("Court of Appeals"). Petitioner alleges that the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law (the "Committee") is violating his Civil Rights in the Committee's enforcement of Rule 49 governing the unauthorized practice of law. Petitioner asserts that the that the Committee is discriminating against petitioner based on his race and that the Committee is involved in a racketeering-conspiracy against petitioner.

Upon consideration of the petition for removal, the Court concludes that the petition should be denied. The Court cannot find a basis in law for petitioner's petition for removal.

An appropriate Order accompanies this Memorandum.

Date: JUL 13, 1992

JOHN GARRETT PENN

CHIEF JUDGE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-8026
92cv01504

In re:

Simon Banks
dba
Job Protectors,

Petitioner

BEFORE: Silberman and Henderson, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus and the preleliminary reply, it is

ORDERED that the petition for a writ of mandamus be denied. The district court properly denied Banks' petition for removal pursuant to 28 U.S.C. § 1443 because Banks failed to demonstrate that the proceedings in the District of Columbia Court of Appeals ("DCCA") deprives him of a right arising "under a feder law 'providing for specific civil rights stated in terms of racial equality,'" and that he "is 'denied or cannot enforce' the specified federal rights" in that court. **See** Johnson v.

Mississippi, 421 U.S. 213, 219 (1974), quoting Georgia v. Rachel, 384 U.S. 780, 792 (1966). Further, this court is without jurisdiction to issue a writ of mandamus to the DCCA, or to review an order of that court. **See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983).** It is

FURTHER ORDERED that the preliminary reply be returned to the District of Columbia Court of Appeals Committee on the Unauthorized Practice of Law. See D.C. Cir. Rule 7 (j) (1) (no responsive pleading to a petition for a writ of mandamus shall be permitted unless requested by the court).

Per Curiam

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 92-SP-652

In the Matter of:
Simon Banks,

Respondent.

Before: King and Sullivan, Associate Judges and Newman,
Senior Judge.

O R D E R

On consideration of the motions and supporting affidavits of the Committee on Unauthorized Practice of Law for a temporary restraining order and a preliminary injunction enjoining the destruction of business record; an order to show cause why the respondent should not be held in contempt for violating this Court's permanent injunction of November 23, 1987; and an expansion of the permanent injunction of November 23, 1987, it is

ORDERED that the motion for an order to show cause is granted, and that the respondent shall show cause within 20 days from the date of this order why he should not be held in contempt for violating this

Court's injunction of November 23, 1987; and it is

ORDERED that the motion for a temporary restraining order and a preliminary injuction is granted to the extent that, prior to the final disposition of this matter, the respondent, the respondent's firm which is doing business under the name "Job Protector," and all persons, organizations and affiliates in active concert or participation with them are restrained from destroying of otherwise disposing of any books, records, computer media, computer data, and any other tangible objects of any kind in existence after November 23, 1987 which relate, in any manner to customers of respondent, the respondent's firm "Job Protectors," or any person, organization of affiliate. It is

FURTHER ORDERED that the motion for an expanded permanent injunction is premature, not ripe for disposition, and hence is denied.

PER CURIAM